

ORIGINAL



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MEMORANDUM

TO: Docket Control

FROM: Steven M. Olea
Director
Utilities Division

DATE: February 22, 2013

RE: IN THE MATTER OF THE APPLICATION OF TRANSTELCO, INC. FOR A
CERTIFICATE OF CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES-BASED LOCAL EXCHANGE TELECOMMUNICATIONS
SERVICES. (DOCKET NO. T-20697A-12-0325)

Attached is the Staff Report for the above referenced application. The Applicant is applying for approval to provide the following services:

- Facilities-Based Local Exchange Services

Staff is recommending approval of the application with conditions.

SMO:AFF:red\SH

Originator: Armando Fimbres

Attachment: Original and Thirteen Copies

Arizona Corporation Commission

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DOCKET NO. T-20697A-12-0325

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STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

TRANSTELCO, INC.
DOCKET NO. T-20697A-12-0325

IN THE MATTER OF THE APPLICATION OF TRANSTELCO, INC. FOR A CERTIFICATE
OF CONVENIENCE AND NECESSITY TO PROVIDE FACILITIES-BASED LOCAL
EXCHANGE TELECOMMUNICATIONS SERVICES.

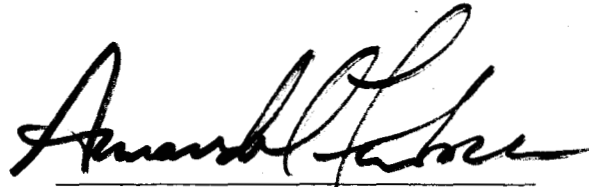
FEBRUARY 22, 2013

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STAFF ACKNOWLEDGMENT

The Staff Report for Transtelco, Inc. Docket No. T-20697A-12-0325, was the responsibility of the Staff member listed below. Armando Fimbres was responsible for the review and analysis of the application for a Certificate of Convenience and Necessity to provide facilities-based local exchange services and petition for a determination that its proposed services should be classified as competitive.

A handwritten signature in black ink, appearing to read 'Armando Fimbres', written over a horizontal line.

Armando Fimbres
Public Utility Analyst V

1. INTRODUCTION

On July 16, 2012, Transtelco, Inc. ("Transtelco" or "Company" or "Applicant") filed an application for a Certificate of Convenience and Necessity ("CC&N") to provide facilities-based local exchange services on a statewide basis in the State of Arizona. The Applicant petitioned the Arizona Corporation Commission ("ACC" or "Commission") for a determination that its proposed services should be classified as competitive.

On August 30, 2012, Transtelco provided confidential financials following completion of a protective agreement with Staff. On October 18, 2012, Staff issued its First Set of Data Requests via email. Transtelco responded on December 18, 2012. On January 22, 2013, Transtelco filed copies of a proposed local exchange and interexchange tariff. During the course of Staff's review in this matter, several discussions were held and numerous emails were exchanged to clarify tariff and other application details.

Staff's review of this application addresses the overall fitness of the Applicant to receive a CC&N. Staff's analysis also considers whether the Applicant's services should be classified as competitive, if the Applicant's initial rates are just and reasonable and if approval of the Applicant's CC&N should be conditioned.

2. REQUESTED SERVICES

Transtelco seeks to provide facilities-based local exchange services to business customers throughout the State of Arizona. Transtelco received a CC&N to provide Resold Long Distance and Resold Local Exchange service from the Commission in Decision No. 71633, dated April 14, 2010, but has not initiated service in Arizona as of the date of this Staff Report.

Transtelco states it has not initiated service in Arizona because "Transtelco is a start-up company and a substantial portion of its operations will be international, with a focus on high capacity services to and from Mexico. The company is in the process of laying fiber over which it plans to offer voice, data, and IP-based services. Transtelco has not provided resold service but its plans clearly involve provision of facilities-based services, within and from Arizona as well as several other states."¹ Transtelco estimates it will begin providing business local exchange services by the second quarter of 2013.²

3. TECHNICAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

Headquartered at 500 W. Overland Ave, Suite 310, El Paso, Texas 79901, Transtelco is a Texas corporation founded in 2001 as an internet service provider for the El Paso, Texas and Ciudad Juarez, Chihuahua, Mexico area. Transtelco is 100 percent owned by Transtelco Holdings, Inc., a privately held company. Transtelco serves carriers and business customers with enterprise and wholesale products and services.

¹ Transtelco response to Staff Data Request STF 1.2

² Transtelco response to Staff Data Request STF 1.3

The Applicant was granted authority to provide local exchange services in Texas on April 10, 2007, New Mexico on March 14, 2007 and California on March 2, 2010, but currently conducts business only in Texas.

The top officers and directors of Transtelco were also identified by Transtelco through the course of certification by the Commission in Decision No. 71633.³ The top Transtelco officers are Miguel Fernandez, Rodrigo Fernandez and Arturo Iglesias, together the majority owners of Transtelco Holdings, Inc and indirectly Transtelco. The Applicant has provided information stating that the top executives have over 25 years of combined experience in the telecommunications industry.

Staff believes that Transtelco possesses the technical capabilities necessary to provide the services it requests the authority to provide.

4. FINANCIAL CAPABILITY TO PROVIDE THE REQUESTED SERVICES

On August 30 and September 6, 2012, Transtelco submitted confidential financial statements directly to Staff. The audited financial statements are for years 2009, 2010 and 2011. For the year ending December 31, 2011, Transtelco reported Total Assets of \$8,367,042; Shareholder Equity of \$2,449,856; and Net Income of negative \$98,784.

Staff believes that advances, deposits, and/or prepayments received from the Applicant's customers should be protected by the procurement of either a performance bond or an Irrevocable Sight Draft Letter of Credit ("ISDLC"). The Applicant states in its proposed Arizona Tariff No. 1, Sections 2.31, Original Sheet No. 10, that it does not collect deposits. The Commission's current performance bond or ISDLC requirements are \$10,000 for resold long distance (for those resellers who collect deposits, advances or prepayments), \$25,000 for resold local exchange, \$100,000 for facilities-based long distance and \$100,000 for facilities-based local exchange services. Decision No. 71633 issued April 14, 2010, required that Transtelco obtain a bond of \$25,000 for the resold local exchange. Based on the facilities-based local exchange services the Applicant is requesting in this application, Staff recommends that Transtelco's performance bond or ISDLC be increased by \$100,000 to \$125,000.

If the Applicant desires to discontinue service, it must file an application with the Commission pursuant to A.A.C. R14-2-1107. Additionally, the Applicant must notify each of its customers and the Commission 60 days prior to filing an application to discontinue service. Failure to meet this requirement should result in forfeiture of the Applicant's performance bond or ISDLC.

Staff further recommends that proof of the above mentioned performance bond or ISDLC be docketed within 30 days of the effective date of a Decision in this matter. The original performance bond or ISDLC should be filed with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket. The performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC on behalf of, and for the sole

³ In the matter of the application of Transtelco, Inc. for a Certificate of Convenience and Necessity to provide Resold Local Exchange Telecommunications Services, Docket No. T-20697A-09-0395

benefit of the Applicant's customers, if the Commission finds, in its discretion, that the Applicant is in default of its obligations arising from its CC&N. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Applicant's customer and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to, returning prepayments or deposits collected from the Applicant's customers.

In the future, should the Applicant desire to collect advances, deposits and/or prepayments from any of its long distance customers, Staff recommends that the Applicant be required to file an application with the Commission for approval. Such application must reference the decision in this docket and must explain the Applicant's plans for procuring a performance bond or an ISDLC.

5. ESTABLISHING RATES AND CHARGES

The Applicant would initially be providing service in areas where an incumbent local exchange carrier ("ILEC"), along with various competitive local exchange carriers ("CLECs") and interexchange carriers are providing telephone service. Therefore, the Applicant would have to compete with those providers in order to obtain subscribers to its services. The Applicant would be a new entrant and would face competition from both an incumbent provider and other competitive providers in offering service to its potential customers. Therefore, the Applicant would generally not be able to exert market power. Thus, the competitive process should result in rates that are just and reasonable.

Both an actual rate and a maximum rate may be listed for each competitive service offered. The rate charged for a service may not be less than the Company's total service long-run incremental cost of providing the service pursuant to A.A.C. R14-2-1109.

The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. In section (B-4) of its application the Company states that its projected net book value at the end of the first twelve months of operation will be \$0 in Arizona jurisdictional assets. Additionally, Transtelco states in section (B-4), that projected revenues of \$182,000 are anticipated for the first twelve months of operations.

Transtelco's intends to provide service under the terms and conditions of its proposed Arizona Tariff No. 1 originally submitted with its application for Resold Long Distance and Resold Local Exchange Services and updated in this application.^{4, 5} Staff has reviewed these rates and believes they are comparable to the rates charged by competitive local carriers and local incumbent carriers operating in the State of Arizona. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value rate base information provided should not be given substantial weight in this analysis.

⁴ T-20697A-09-0325, Decision No. 71633

⁵ Tariff contact changed from Joseph Isaacs, Chief Regulatory Officer to Arturo Iglesias, Chief Technology Officer

6. LOCAL EXCHANGE CARRIER SPECIFIC ISSUES

Issues related to the provision of that Local Exchange service are discussed below.

6.1 *Number Portability*

The Commission has adopted rules to address number portability in a competitive telecommunications services market. Local exchange competition may not be vigorous if customers, especially business customers, must change their telephone numbers to take advantage of a competitive local exchange carrier's service offerings. Consistent with federal laws, federal rules and A.A.C. R14-2-1308(A), the Applicant shall make number portability available to facilitate the ability of a customer to switch between authorized local carriers within a given wire center without changing their telephone number and without impairment to quality, functionality, reliability or convenience of use.

6.2 *Provision of Basic Telephone Service and Universal Service*

In response to Staff's First Set of Data Request and in discussions with Staff, Transtelco confirmed its intentions to provide services directly to local exchange users.

The Commission has adopted rules to address universal telephone service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund ("AUSF"). The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204(B).

6.3 *Quality of Service*

Staff believes that the Applicant should be ordered to abide by the quality of service standards that were approved by the Commission for Qwest (f/k/a USWC) in Docket No. T-01051B-93-0183 (Decision No. 59421). Because the penalties developed in that docket were initiated because Qwest's level of service was not satisfactory and the Applicant does not have a similar history of service quality problems, Staff does not recommend that those penalties apply to the Applicant. In the competitive market that the Applicant wishes to enter, the Applicant generally will have no market power and will be forced to provide a satisfactory level of service or risk losing its customers. Therefore, Staff believes that it is unnecessary to subject the Applicant to those penalties at this time.

6.4 *Access to Alternative Local Exchange Service Providers*

Staff expects that there will be new entrant providers of local exchange service who will install the plant necessary to provide telephone service to, for example, a residential subdivision or an industrial park much like existing local exchange companies do today. There may be areas where the Applicant installs the only local exchange service facilities. In the interest of providing competitive alternatives to the Applicant's local exchange service customers, Staff recommends that the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve such areas. This way, an alternative local exchange service

provider may serve a customer if the customer so desires. Access to other providers should be provided pursuant to the provisions of the 1996 Telecommunications Act, the rules promulgated there under and Commission rules on interconnection and unbundling.

6.5 911 Service

The Commission has adopted rules to address 911 and E911 services in a competitive telecommunications services market. The Applicant has certified that in accordance with A.A.C. R14-2-1201(6)(d) and Federal Communications Commission ("FCC") 47 CFR Sections 64.3001 and 64.3002, it will provide all customers with 911 and E911 service, where available, or will coordinate with ILECs and emergency service providers to provide 911 and E911 service.

6.6 Custom Local Area Signaling Services

Consistent with past Commission decisions, the Applicant may offer Caller ID provided that per call and line blocking, with the capability to toggle between blocking and unblocking the transmission of the telephone number, are provided as options to which customers could subscribe with no charge. Also, Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated, indicating that the number has been blocked, must be offered.

7. REVIEW OF COMPLAINT INFORMATION

The Applicant states in section A-18 of this application that an application for service has never been denied. However, the Applicant also disclosed in section A-18 that its telecommunications authority was revoked in California "on the basis of late filing of certain surcharge reports." Staff research confirmed that Transtelco's California telecommunications authority, granted by Decision 10-02-021 on March 2, 2010, was revoked by Resolution T-17359, dated April 19, 2012. The same California Commission resolution revoked the operating authority of 106 carriers for being in default of at least one of the following requirements: (1) reporting and remittance of User Fees; (2) reporting and remittance of surcharges; and (3) submission of a performance bond. Transtelco was found to be in default of requirements (1) and (2).

Staff also found that Transtelco had not filed Utilities Annual Reports with the Commission for years 2010 and 2011. Transtelco filed the missing Annual Reports on October 1, 2012.

Upon contacting the New Mexico Commission, Staff learned that Transtelco was found to be remiss in not filing the latest carrier and utility fee report and its CLEC annual report. Transtelco filed its missing New Mexico reports in October 2012. Transtelco is now in Good Standing in both Arizona and New Mexico.

In discussion with Staff, Transtelco expressed its belief that compliance issues with California, Arizona and New Mexico requirements are attributable to the startup company's lack of experience with regulatory requirements. Transtelco has stated that its regulatory organization has been revised to ensure future compliance. Transtelco states in response to Staff First Data

Request STF1.3, that steps are underway to prepare an application for reinstatement in California.

The Applicant states in Section A-11 of its application that “neither applicant, nor any of its officers, directors, partners or managers are or have been involved in any formal or informal complaint proceedings before any federal or state regulatory commission, administrative agency or law enforcement agency since the inception of the company.” The Utilities Consumer Services section reports no complaint history within Arizona. Staff’s review of the FCC website did not reveal any complaints.

The Applicant states in Section A-12 of its application that none of the Applicant's officers directors, partners or managers have been involved in any civil or criminal investigation or had judgments entered in any civil matter, judgments levied by any administrative or regulatory agency, or been convicted of any criminal acts within the last ten (10) years.

8. COMPETITIVE SERVICES ANALYSIS

The Applicant has petitioned the Commission for a determination that the services it is seeking to provide should be classified as competitive.

8.1 *Competitive Services Analysis for Local Exchange Services*

8.1.1 A description of the general economic conditions that exist, which makes the relevant market for the service one that, is competitive.

The statewide local exchange market that the Applicant seeks to enter is one in which a number of CLECs have been authorized to provide local exchange service in areas previously served only by ILECs. At locations where ILECs provide local exchange service, the Applicant will be entering the market as an alternative provider of local exchange service and, as such, will have to compete with those existing companies in order to obtain customers. In areas where ILECs do not serve customers, the Applicant may have to convince developers to allow it to provide service to their developments. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and Voice over the Internet Protocol (“VoIP”) service providers. This may also be the case in areas served by independent ILECs.

8.1.2 The number of alternative providers of the service.

CenturyLink and various independent ILECs provide local exchange service in the State. CLECs and local exchange resellers are also providing local exchange service. The areas served by CenturyLink that the Applicant seeks to enter are served by wireless carriers and VoIP service providers. This may also be the case in portions of the independent ILECs’ service territories.

8.1.3 The estimated market share held by each alternative provider of the service.

CenturyLink and CLECs are the primary providers of local exchange service in CenturyLink's Service territories. Independent ILECs are the primary providers of local exchange service in their service territories.

8.1.4 The names and addresses of any alternative providers of the service that are also affiliates of the Applicant, as defined in A.A.C. R14-2-801.

Transtelco does not have any affiliates that are alternative providers of local exchange service in Arizona.

8.1.5 The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms and conditions.

ILECs have the ability to offer the same services that the Applicant has requested the authority to provide in their respective service territories. Similarly, many of the CLECs, local exchange service resellers, wireless carriers and VoIP service providers also offer substantially the same services.

8.1.6 Other indicators of market power, which may include growth and shifts in market share, ease of entry and exit, and any affiliation between and among alternative providers of the service(s).

The local exchange service market is:

- a. One in which ILECs own networks that reach nearly every residence and business in their service territories. Competition exists in most urban markets, but to a lesser degree in rural areas of the state.
- b. One in which new entrants will be dependent upon ILECs and other CLECs:
 1. To terminate traffic to customers.
 2. To provide essential local exchange service elements until the entrant's own network has been built.
 3. For interconnection.
- c. One in which existing ILECs and CLECs have had an existing relationship with their customers that the Applicant will have to overcome if it wants to compete in the market and one in which the Applicant will not have a history in the Arizona local exchange service market.
- d. One in which the Applicant will not have the capability to adversely affect prices or restrict output to the detriment of telephone service subscribers.

9 RECOMMENDATIONS

The following sections contain the Staff recommendations on the application for a CC&N and the Applicant's petition for a Commission determination that its proposed services should be classified as competitive.

9.1 *Recommendations on the Application for A CC&N*

Staff recommends that Applicant's application for a CC&N to provide intrastate telecommunications services, as listed in this Report, be granted. In addition, Staff further recommends:

1. That the Applicant comply with all Commission Rules, Orders and other requirements relevant to the provision of intrastate telecommunications services;
2. That the Applicant abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-01051B-93-0183;
3. That the Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
4. That the Applicant be required to notify the Commission immediately upon changes to the Applicant's name, address or telephone number;
5. That the Applicant cooperate with Commission investigations including, but not limited to customer complaints;
6. The rates proposed by this filing are for competitive services. In general, rates for competitive services are not set according to rate of return regulation. Transtelco's projected book value or fair value rate base at the end of its first 12 months of operation is projected to be \$0. Additionally, Transtelco provided a revenue projection of \$182,000 for the first twelve months of operation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other providers offering service in Arizona and comparable to the rates the Applicant charges in other jurisdictions. The rate to be ultimately charged by the Company will be heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the Company, the fair value information provided was not given substantial weight in this analysis;
7. That the Applicant offer Caller ID with the capability to toggle between blocking and unblocking the transmission of the telephone number at no charge;
8. That the Applicant offer Last Call Return service that will not return calls to telephone numbers that have the privacy indicator activated;

9. Staff further recommends that the Commission authorize the Applicant to discount its rates and service charges to the marginal cost of providing the services;

Staff further recommends that the Applicant be ordered to comply with the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. The Applicant shall docket a conforming tariff for each service within its CC&N within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever comes first.
2. The Applicant shall:
 - a. Procure a performance bond or an ISDLC equal to \$100,000. The minimum bond or draft amount of \$100,000 should be increased if at any time it would be insufficient to cover advances, deposits, and/or prepayments collected from the Applicant's customers. The bond or draft amount should be increased in increments of \$50,000. This increase should occur when the total amount of the advances, deposits, and prepayments is within \$10,000 of the bond amount or ISDLC amount; and
 - b. File the original performance bond or ISDLC with the Commission's Business Office and copies of the performance bond or ISDLC with Docket Control, as a compliance item in this docket, within 90 days of the effective date of a decision in this matter or 10 days before service to end-user customers is commenced, whichever comes first. The original performance bond or ISDLC must remain in effect until further order of the Commission. The Commission may draw on the performance bond or ISDLC, on behalf of, and for the sole benefit of the Company's customers, if the Commission finds, in its discretion, that the Company is in default of its obligations arising from its Certificate. The Commission may use the performance bond or ISDLC funds, as appropriate, to protect the Company's customers and the public interest and take any and all actions the Commission deems necessary, in its discretion, including, but not limited to returning prepayments or deposits collected from the Company's customers;
 - c. Staff also recommends that the Company notify the Commission through a compliance filing within 30 days of the commencement of service to end-user customers; and
3. The Applicant shall abide by the Commission adopted rules that address Universal Service in Arizona. A.A.C. R14-2-1204(A) indicates that all telecommunications service providers that interconnect into the public switched network shall provide funding for the Arizona Universal Service Fund. The Applicant will make the necessary monthly payments required by A.A.C. R14-2-1204 (B).

Furthermore, Staff recommends that approval of the Application be conditioned on the following. If it does not do so, the Applicant's CC&N shall be null and void, after due process.

1. That Transtelco will provide local exchange service directly to end-users in Arizona within three years of the date of the decision for this application.
2. That Transtelco file for cancellation of its CC&N in the event that it does not provide local exchange service directly to end-users in Arizona within three years of the date of a Decision in this matter. The filing for CC&N cancellation shall be filed within 39 months of the date of a Decision in this matter.

9.2 Recommendation on the Applicant's Petition to Have Its Proposed Services Classified as Competitive

Staff believes that the Applicant's proposed services should be classified as competitive. There are alternatives to the Applicant's services. The Applicant will have to convince customers to purchase its services, and the Applicant has no ability to adversely affect the local exchange or interexchange service markets. Therefore, the Applicant currently has no market power in the local exchange or interexchange service markets where alternative providers of telecommunications services exist. Staff therefore recommends that the Applicant's proposed services be classified as competitive.